

**Government of the District of Columbia
Public Employee Relations Board**

In the Matter of:

District of Columbia Department of Corrections,

Petitioner,

and

Fraternal Order of Police/
Department of Corrections Labor Committee
(On behalf of Carl Butler),

Respondent.

PERB Case No. 06-A-01

Opinion No. 824

FOR PUBLICATION

DECISION AND ORDER

I. Statement of the Case

The Department of Corrections ("DOC") filed an Arbitration Review Request ("Request"). DOC seeks review of an Arbitration Award ("Award") that sustained a grievance filed by the Fraternal Order of Police/Department of Corrections Labor Committee ("FOP" or "Union") on behalf of the Grievant, Carl Butler ("Grievant"). FOP opposes the Request.¹

The issue before the Board is whether "the arbitrator was without authority or exceeded his or her jurisdiction" or whether "the award on its face is contrary to law and public policy." D.C. Code § 1-605.02 (6) (2001 ed.).

¹ See Respondent's Opposition to Petitioner's Arbitration Review Request ("Opposition").

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I. Discussion

On or about December 18, 2004, the Grievant, a correctional officer of the DOC, "brought contraband food into [a] prison cell. . . ." (Award at p. 34). His actions were seen and reported by other correctional officers. An investigation was conducted and the Deputy Warden for Operations recommended that the Grievant be discharged for violation of DOC's contraband policy. On February 28, 2005, the Grievant was sent a notice informing him of the Deputy Warden's recommendation and his right to request a departmental hearing. The Grievant requested such a hearing, and Hearing Officer Delores Thomas reviewed the recommendation and determined that the appropriate penalty was a forty-five (45) day suspension. (Award at pgs. 7-8). Interim Director York remanded the case, presenting exhibits "to show the Hearing Officer that DOC took contraband seriously." (Award at p. 11). After the remand, the Hearing Officer determined that the discharge was appropriate. (See Award at p. 12). Subsequently, on or about May 23, 2005, the Grievant received a discharge letter. The Union filed a grievance on behalf of Mr. Butler, and the grievance was denied. The Union then invoked arbitration on June 21, 2005. On September 27, 2005 an arbitration hearing was held before Arbitrator Guy Raymond.

The issue before the Arbitrator was whether "the discharge of Carl Butler [was] for cause, in accordance with the parties... [Collective Bargaining Agreement ("CBA")]. . . and Chapter 16 of the District Personnel Manual?" (Award at p. 2).

At arbitration, DOC asserted that there was sufficient evidence to establish cause for the adverse action taken against the Grievant based upon his own admissions to DOC's investigators. (See Award at p. 14). DOC also argued that the Grievant's change in his story regarding the incident in a subsequent interview with investigators undermined his credibility. (See Award at p. 21). DOC claimed that utilizing progressive discipline would be inappropriate because of the Grievant's attitude towards his violation. (See Award at p. 23). Specifically, DOC believed the Grievant did not appreciate the seriousness of his violation of the contraband policy. DOC also argued that the Arbitrator should arrive at the same result as another arbitrator in a similar case involving DOC, and thereby sustain the Grievant's termination. (See Award at p. 23).

FOP argued that the Arbitrator was not confined to determining if there was cause for disciplining a grievant. Specifically, FOP contended that the Arbitrator may also determine what, if any, penalty should be imposed. (See Award at p. 27). FOP claimed in this case that the penalty was excessive. (See Award at p. 28). FOP asserted that the Grievant should have been provided a "remand memo" and "summary of prior discharges", and that in failing to do so, DOC ignored the Grievant's due process rights. (See Award at p. 22).

DOC, countered that: (1) it did not ignore any due process rights; (2) the Grievant waived any due process rights when he confessed to the violation and signed the waiver of union representation; and (3) the CBA contains no provisions granting the Grievant any due process rights.

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(See Award at pgs. 22-23).

In an Award dated December 1, 2005, Arbitrator Raymond, found:

Carl Butler had an **impeccable 12 year record with D.O.C.** [Grievant received [n]othing lower than superior [performance evaluations] and two letters of commendation. . . .

Discharge is **too harsh** a punishment for the **circumstances disclosed** at this arbitration **hearing** with his excellent service record to D.O.C. . . . In all justice he is deserving of a progressive discipline penalty namely 45 days of suspension with no pay. . . .
(Award at p. 36)(Emphasis in the original).

The Arbitrator, in reducing the penalty referred to Union Exhibit 2, the initial memorandum from the Hearing Examiner to the Interim Director recommending a suspension of 45 days. (See Award at pgs. 11, 36).

In their Arbitration Review Request, DOC claims that "the Arbitrator exceeded his authority and, in so doing, issued an award that, on its face, violates both law and public policy." (Request at p. 4). FOP countered that DOC's Request has not presented a statutory basis for review, and that the Award is not contrary to law and public policy. (See Opposition at pgs. 2,4).

When a party files an arbitration review request, the Board's scope of review is extremely narrow. Specifically, the Comprehensive Merit Personnel Act ("CMPA") authorizes the Board to modify or set aside an arbitration award in only three limited circumstances; that:

1. the arbitrator was without, or exceeded, his or her jurisdiction;
2. the award on its face is contrary to law and public policy; or
3. the award was procured by fraud, collusion or other similar and unlawful means.

D.C. Code § 1-605.02(6) (2001 ed.).

In the present case, DOC asserts that the Arbitrator reduced the penalty based on a "misapprehension" and a failure to "apply the correct evidentiary standard." (Request at pgs. 5-6). In support of this assertion, DOC disagrees with the criteria the Arbitrator expounded upon in rendering his decision; specifically the psychological impact of discipline. Furthermore, DOC argues that the evidentiary standard for proving there was "cause" for disciplinary action did not permit the Arbitrator to reduce the penalty. DOC claims that a "cause" standard would only allow the Arbitrator to determine if DOC's decision to discipline the Grievant was "rational and fair". (Request at p. 6).

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FOP counters that an arbitrator is given broad equitable power to fashion a remedy unless the contract expressly limits that authority and that no such contractual limitation exists in this case. (Opposition at pgs. 2-3). FOP concludes that DOC's position amounts to a mere disagreement with the Arbitrator's findings and conclusions, and does not present a statutory basis for review. (Opposition at p. 3). We agree.

Although DOC initially asserted that the Arbitrator was without authority and exceeded his jurisdiction in rendering his Award, no supporting argument was made in the body of its Request. Moreover, we believe that the argument DOC does present is merely a disagreement with the Arbitrator's findings and conclusions. We have explained that:

[by] submitting a matter to arbitration the parties agree to be bound by the Arbitrator's interpretation of the parties' agreement, related rules and regulations, as well as the evidentiary findings and conclusions on which the decision is based.

District of Columbia Metropolitan Police Department v. Fraternal Order of Police/Metropolitan Police Department Labor Committee, 47 DCR 7217, Slip Op. No. 633 at p. 3, PERB Case No. 00-A-04 (2000); *D. C. Metropolitan Police Department and Fraternal of Police/Metropolitan Police Department Labor Committee (Grievance of Angela Fisher)*, 51 DCR 4173, Slip Op. No. 738, PERB Case No. 02-A-07 (2004).

We have found that an arbitrator's authority is derived "from the parties' agreement and any applicable statutory and regulatory provision." *D.C. Department of Public Works and AFSCME, Local 2091*, 35 DCR 8186, Slip Op. No. 194, PERB Case No. 87-A-08 (1988). An arbitrator does not exceed his authority by exercising his equitable power, unless it is expressly restricted by the parties' CBA.² See, *District of Columbia Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee*, 39 DCR 6232, Slip Op. No. 282, PERB Case No. 92-A-04 (1992). Also, the Supreme Court held in *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597, 80 S. Ct. 1358, 4 L. Ed. 2d 1424 (1960), that "part of what the parties bargain for when they include an arbitration provision in a labor agreement is the 'informed judgment' that the arbitrator can bring to bear on a grievance, especially as to the formulation of remedies." See also, *Metropolitan Police Department v. Public Employee Relations Board*, D.C. Sup. Ct. No. 04 MPA 0008, at p. 6 (May 13, 2005).

In, the present case, DOC merely disagrees with the Arbitrator's conclusion that discharge is too harsh a penalty in this case. Also, DOC has not established that the CBA limited the Arbitrator's authority to fashion a remedy. Whereas DOC has failed to present a statutory basis for review, we cannot grant its Request on this ground.

²We note that if the parties' CBA limited the arbitrator's power, that limitation would be enforced.

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As a second basis for review, DOC claims that the Arbitrator's Award on its face violates law or public policy, in that it "conflicts with well respected Supreme Court precedent." (Request at p. 6). DOC cites a number of cases which provide that an arbitration decision may be overturned where the decision is contrary to law or public policy. (See Request at pgs. 6-11). DOC asserts that since the Grievant committed a felony³, the Arbitrator erred in reducing the penalty. (See Request at pgs. 11-12).

FOP countered that "[t]here is no evidence that [the Grievant] committed a felony or that he was terminated for committing a felony." (Opposition at p. 4). Specifically, FOP claims that the fish the Grievant brought to the facility was not contraband because he was permitted to bring it to work for his "own use" and that the only reason he gave it to the inmates was due to his reassignment where he could not consume the fish. (See Opposition at p. 5). FOP argued that the Grievant "did not bring any contraband into the Jail . . . [and] [t]herefore, he is not guilty of a felony under D.C. Code § 22-2603." (Opposition at p. 5).

The possibility of overturning an arbitration decision on the basis of law and public policy is an "extremely narrow" exception to the rule that reviewing bodies must defer to an arbitrator's interpretation of the contract "[T]he exception is designed to be narrow so as to limit potentially intrusive judicial review of arbitration awards under the guise of Public Policy." *American Postal Workers Union, AFL-CIO v. United States Postal Service*, 789 F.2d 1, 8 (D.C. Cir. 1986). We have held that to set aside an award as contrary to law and public policy, the Petitioner must present applicable law and definite public policy that mandates that the arbitrator arrive at a different result. *AFGE, Local 631 and Dept. Of Public Works*, 45 DCR 6617, Slip Op. No. 365, PERB Case No. 93-A-03 (1993). A petitioner must demonstrate that the arbitration award "compels" the violation of an explicit, well defined, public policy grounded in law or legal precedent. See *United Paperworkers Int'l Union, AFL-CIO v. Misco Inc.*, 484 U.S. 29, 43 (1987). As the District of Columbia Court of Appeals has stated, a reviewing Board or Court must "not be led astray by our own (or anyone else's) concepts of 'public policy' no matter how tempting such a course might be in a particular factual setting." *Department of Corrections v. Local No. 246*, 554 A. 2d 319, 325 (D.C. 1989).

³See D.C. Code § 22-2603, which provides:

Any person, not authorized by law, or by the Mayor of the District of Columbia, or by the Director of the Department of Corrections of the District of Columbia, who introduces or attempts to introduce into or upon the grounds of any penal institution of the District of Columbia, whether located within the District of Columbia or elsewhere, any narcotic drug, weapon, or any other contraband article or thing, or any contraband letter or message intended to be received by an inmate thereof, shall be guilty of a felony, and, upon conviction thereof in the Superior Court of the District of Columbia or in any court of the United States, shall be punished by imprisonment for not more than 10 years.

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District of Columbia Official Code § 22-2603 (2001 ed.) makes it a felony for any person to give contraband to inmates. The issue of whether or not the Grievant violated the statute was not before the Arbitrator, and he made no finding on that issue.⁴ The issue in this case was whether the discharge of the Grievant was for cause, in accordance with the parties' CBA and Chapter 16 of the District Personnel Manual. Furthermore, D.C. Code § 22-2603 contains no provisions that mandates that an arbitrator sustain the discharge of an employee for its violation. The petitioning party in an arbitration review request has the burden to specify applicable law and definite public policy that mandates that the Arbitrator reach a different result. See *District of Columbia Metropolitan Police Department and Fraternal Order of Police/MPD Labor Committee*, 47 DCR 717, Slip Op. No. 633, PERB CASE No. 00-A-04 (2000); See also *District of Columbia Public Schools and American Federation of State, County and Municipal Employees, District Council 20*, 34 DCR 3610, Slip Op. No. 156 at p. 6, PERB Case No. 86-A-05 (1987). Neither the DC Personnel Manual nor the contraband law mandates that an arbitrator sustain a discharge under the circumstances presented in this case.

In addition, DOC contends that the Award is contrary to the public policy which requires DOC to maintain order in a correctional facility. However, DOC cited no specific law or public policy that mandates that an arbitrator sustain the dismissal of an employee for any infraction that DOC contends interferes with its duty to maintain order. It was DOC's burden to establish the existence of a specific law or public policy mandating that the Arbitrator reach a different result. DOC has not alleged, let alone proved, the existence of any such specific law or public policy.

The Board finds that DOC has failed to present a statutory basis for review of the Arbitrator's Award in this case.

For the reasons discussed above DOC's Request is denied.

⁴It should be noted that DOC presented no evidence that the Grievant was either charged, prosecuted or convicted under this statute.

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ORDER

IT IS HEREBY ORDERED THAT:

- (1) The District of Columbia Department of Correction's Arbitration Review Request is denied.
- (2) Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

September 11, 2006

**Government of the District of Columbia
Public Employee Relations Board**

In the Matter of:)

District of Columbia)
Department of Corrections,)

Petitioner,)

and)

Fraternal Order of Police,)
Department of Corrections Labor Committee,)

Respondent.)
_____)

PERB Case No. 04-A-14

Opinion No. 825

FOR PUBLICATION

DECISION AND ORDER

I. Statement of the Case

The District of Columbia Department of Corrections ("DOC") filed an Arbitration Review Request ("Request") and a document styled "Memorandum in Support of Arbitration Review Request." ("Memorandum"). DOC seeks review of an arbitration award ("Award") which: (1) rescinded the termination of Dexter Allen ("Grievant"), a bargaining unit member; and (2) awarded full back pay with seniority with no offset for interim earnings. The Fraternal Order of Police/Department of Corrections Labor Committee ("FOP" or "Union") opposes the Request.

The issue before the Board is whether "the arbitrator was without authority or exceeded his or her jurisdiction" or whether "the award on its face is contrary to law and public policy." D.C. Code § 1 - 605.02(6) (2001 ed.).

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II. Discussion:

"On May 17, 2001, a group of male students from Evans Junior High School, in the D.C. Public School system took a tour of the D.C. Jail. On that date the Grievant was on duty as a correctional officer (Corporal) at the D.C. Jail. Other correctional officers also were on duty. During the tour, allegedly at the urging of D.C. Public School employees, the students were subjected to some procedures associated with the intake of prisoners into the facility including strip searches and body cavity searches as well as exposure while naked to inmates who made abusive comments to the students, isolation, and students were forced to wear prison clothing." (Award at pgs. 4-5). In addition "[t]he students were subjected to the foregoing actions by correctional officers on duty at the D.C. Jail on the date of the tour. These officers also forcibly removed clothing from the students and yelled at them." (Award at p. 5).

The incident was reported to the Office of Internal Affairs by a correctional officer who was not involved in the incident. (See Memorandum at p. 3). An investigation was conducted and the Grievant, as well as other officers, was found to have violated several departmental regulations and procedures. (See Request at pgs. 5-7). Subsequently, the Grievant was summarily removed on May 29, 2001. (See Request at p. 8).

The Union filed a grievance, which was denied. As a result, the Union invoked arbitration on behalf of the Grievant. The issue before the Arbitrator was: "Did the Agency have just cause to summarily remove [the] Grievant and then terminate him. If not, what shall be the remedy?" (Award at p. 2).

At arbitration, DOC argued that the Grievant had participated in the incident. In its Notice of Termination to the Grievant, DOC provided the following and based its decision to terminate the Grievant on the following grounds:

- A. Violation of Department Order 4080.1A (September 1992) Inmate Visiting Regulations, Section D. Visitor Searches, Paragraph (2) which states in pertinent part that "all visitors shall be searched by a scanning device and pat search.[]" Paragraph (D)(3) provides that "Department of Corrections personnel are strictly prohibited from performing body cavity (anal or genital) searches or [']strip searches[]" on visitors to the facility." Paragraph (D)(4) states "If a finish search is insufficient to allay suspicions that a visitor is smuggling contraband, this shall be reported to the supervisory correctional officer on duty."

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- B. Violation of Department Order 101.5B, Chain of Command due to [the Grievant's] failure to consult with a supervisor before engaging in the egregious conduct with the student visitors to the [D.C.] Jail on May 17, 2001. Specifically, Department Order 1010.5B, Section IX(A) provides that "It is incumbent upon all department employees to understand, recognize and determine when official communications and transactions must be cleared through the chain of command. When in doubt regarding this requirement the appropriate supervisory personnel should be consulted."
- C. Violation of Correctional Officer's General [Order], 10. General Order 10 requires "that correctional officers be courteous to all supervisors, fellow employees, residents and members of the general public; act in a gentlemanly and ladylike manner at all times, and commit no acts which . . . will discredit the Department of Corrections, or the Government of the District of Columbia."
- D. Violation of Correctional Officer's General Order Number 11 requires that Correctional Officers "Call the Shift Supervisor immediately in all circumstances not covered by instructions or orders."

(Memorandum at p. 12).

The Union countered that the Grievant had not participated in the May 17th incident; therefore, DOC did not have cause to terminate the Grievant. (See Award at p. 5).

In an Award dated May 13, 2004, Arbitrator Fredenberger found that the record did not establish that the Grievant participated in the actions taken by other correctional officers against the students touring the correctional facility on May 17, 2001. (See Award at p. 5). Specifically, the Arbitrator stated:

Review of the record substantiates the Union's position that while the Grievant was on duty at the D.C. Jail on the day of the tour while students were present, it does not establish his participation in any of the inappropriate or improper acts perpetrated by correctional officers on the students on the date of the tour Accordingly, it must be concluded that the Grievant was not summarily removed or terminated for cause. (Award at p. 5).

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As a remedy, the Arbitrator directed that the Grievant should be "restor[ed] to his position with full back pay and seniority." (Award at p. 6). In addition, the Arbitrator indicated that "there [should] be no deduction from the back pay for outside earnings by [the] Grievant during the period he has been out of service." (Award at p. 6).

In its Request, DOC asserts that the Arbitrator exceeded his jurisdiction and was without authority by: (1) rendering an award that allows for payment of back pay without deductions for interim earnings; (2) making the remedy unnecessarily punitive to the agency; (3) not addressing or making determinations regarding all of DOC's grounds for termination; and (4) having questionable competence.

Also, DOC claims that the Arbitrator's Award is contrary to law and public policy because: (a) it provides for an award of back pay without deductions for interim earnings; (b) the Arbitrator's competence is questionable; (c) it violates the Fourth Amendment of the United States Constitution; and (d) the Award is unnecessarily punitive. (See Memorandum pgs. 8-17).

FOP counters that "[t]he award of full back pay with no offset for interim earnings does not exceed the jurisdiction of the Arbitrator, nor is it contrary to law or public policy." (Opposition at p. 5). In addition, FOP argues that "the Arbitrator did not exceed his authority, as he confined his decision to the issue submitted for arbitration, and [the Petitioner's] mere disagreement with the Arbitrator's decision on the issue presented raises no statutory ground for review." (Opposition at p. 9). Also, FOP contends that "[t]he Arbitrator's evidentiary findings and conclusions that [Petitioner] failed to establish the Grievant's participation in any inappropriate or improper conduct is not contrary to public policy." (Opposition at p. 11). FOP also claims that the "[Petitioner's] assertion that the Arbitrator is mentally incompetent to render a decision is without merit and does not form a statutory basis for review." (Opposition at p. 12). Lastly, FOP argues that "[Petitioner] waived any objection with regard to its claim that the Award was not made within the time required by the parties' agreement."¹ (Opposition at p. 13). In light of the above, FOP asserts that the Board should deny DOC's Request.

When a party files an arbitration review request, the Board's scope of review is extremely narrow. Specifically, the Comprehensive Merit Personnel Act ("CMPA") authorizes the Board to modify or set aside an arbitration award in only three limited circumstances:

1. If "the arbitrator was without, or exceeded, his or her jurisdiction";
2. If "the award on its face is contrary to law and public policy"; or

¹We note that in DOC's Request, it contends that the Arbitrator was in contravention of his authority by failing to timely issue the Award within thirty days. However, DOC did not provide an argument concerning the timeliness of the Award in either its Memorandum or in the Request. Therefore, we believe that is not necessary for the Board to consider this statement.

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3. If the award "was procured by fraud, collusion or other similar and unlawful means."

D.C. Code § 1-605.02(6) (2001 ed.).

A. Whether the arbitrator was without, or exceeded, his jurisdiction.

In the present case, DOC claims that the Arbitrator exceeded his jurisdiction and was without authority by: (1) rendering an award that allows for payment of back pay without deductions for interim earnings; (2) making the remedy unnecessarily punitive; (3) not addressing or making determinations regarding all of DOC's grounds for termination; and (4) having questionable competence. We will address each of these four arguments separately.

First, DOC contends that the Arbitrator exceeded his jurisdiction by allowing for payment of back pay without deductions for interim earnings in violation of the parties' Compensation Agreement. (See Memorandum at pgs. 8-9). In support of its argument, DOC asserts that, in Article 10 of the compensation agreement between Compensation Units 1 and 2 and the District of Columbia, the parties have agreed, *inter alia*:

Arbitration awards or settlement agreements in cases involving an individual employee shall be paid within sixty (60) days of receipt from the employee of relevant documentation, including documentation of interim earnings and other potential offsets.

(Memorandum at p. 9).

DOC contends that Article 10 "clearly contemplates that the parties expect that interim earnings will be deducted from any arbitration award." (Memorandum at p. 9). Also, DOC asserts that Arbitrator Fredenberger ignored the plain reading of Article 10 of the compensation agreement.

FOP counters that Article 10 is inapplicable, because it was never entered into evidence. (See Opposition at p. 6). Furthermore, FOP argues that neither Article 10 of the compensation agreement, nor the provisions of the District Personnel Manual ("DPM") cited by DOC, "expressly and specifically limit the authority of the Arbitrator." (Opposition at p. 6).

In DOC's Memorandum, it refers to the parties' compensation agreement as Exhibit "Jt-1". (Memorandum at pgs. 8-9). However, after reviewing the parties' pleadings and exhibits, we find that the compensation agreement DOC refers to as Exhibit "Jt-1" was not entered into evidence during the Arbitration hearing as an exhibit. Instead, the exhibit designated as "Jt-1" is actually the

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parties' *working conditions agreement* or collective bargaining agreement ("CBA").² Thus, the compensation agreement between the District of Columbia and Compensation Units 1 and 2, as cited by DOC, was not before the Arbitrator. (See Transcript at p. 6). Consequently, the Board finds that Article 10 was not presented to the Arbitrator for his interpretation. As a result, we conclude that DOC has raised this issue for the first time in its Request. This Board has held that "[i]ssues not presented to the arbitrator cannot subsequently be raised before the Board as a basis for vacating an award." *District of Columbia Police/Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee*, 39 DCR 6232, Slip Op. No. 282 at p. 4 n. 5, PERB Case No. 87-A-04 (1992). Moreover, a Petitioner cannot base an arbitration review request on issues not first presented to an arbitrator. See *District of Columbia Fire and Emergency Services and AFGE, Local 3721*, DCR, Slip Op. No. 756, PERB Case No. 02-A-08 (2004). In light of the above, we conclude that DOC's claim regarding Article 10 of the compensation agreement cannot be considered as a basis for review because DOC's argument regarding Article 10 was raised for the first time in its Request.

As a second basis for review, DOC asserts that the Arbitrator was without authority and exceeded his jurisdiction because the Award is "unnecessarily punitive" against DOC and "exceptionally unusual". (Memorandum at p. 10). In support of this claim, DOC argues that the purpose of a remedy "is to make an employee whole, but should not be unnecessarily punitive in nature". (Memorandum at p. 10). FOP contends that DOC's argument amounts to a disagreement with the Arbitrator's remedy and does not present a statutory basis for review. (See Opposition at p. 8).

We have found that an arbitrator's authority is derived "from the parties' agreement and any applicable statutory and regulatory provision." *D.C. Department of Public Works and AFSCME, Local 2091*, 35 DCR 8186, Slip Op. No. 194 at p. 2, PERB Case No. 87-A-08 (1988). Also, we have held that an arbitrator does not exceed his authority by exercising his equitable power, unless it is expressly restricted by the parties' collective bargaining agreement ("CBA").³ See, *District of Columbia Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee*, 39 DCR 6232, Slip Op. No. 282, PERB Case No. 92-A-04 (1992). Moreover, the Supreme Court held in *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597, 80 S. Ct. 1358, 4 L.Ed.2d 1424 (1960), that "part of what the parties bargain for when they include an arbitration provision in a labor agreement is the 'informed judgment' that the arbitrator can bring to bear on a grievance, especially as to the formulation of remedies." See also, *Metropolitan Police Department v. Public Employee Relations Board*, D.C. Sup. Ct. No. 04

²As previously discussed in this Opinion, we have determined that the compensation agreement was not before the Arbitrator. Therefore, whenever the term "collective bargaining agreement" or "CBA" is used in this Opinion, it refers to the parties' working conditions agreement.

³We note that if the parties' CBA limits the arbitrator's power, that limitation would be enforced.

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MPA 0008, at p. 6 (May 13, 2005).

Furthermore, this Board has held that an arbitrator's decision must be affirmed by a reviewing body "as long as the arbitrator is even arguably construing or applying the contract." *United Paperworkers Int'l Union, AFL-CIO v. Misco Inc.*, 484 U.S. 29, at 38 (1987). Also, we have explained that:

[by] submitting a matter to arbitration the parties agree to be bound by the Arbitrator's interpretation of the parties' agreement, related rules and regulations, as well as the evidentiary findings and conclusions on which the decision is based.⁴

In the present case, DOC does not cite any provision of the parties' CBA which limits the Arbitrator's equitable power. Therefore, once Arbitrator Fredenberger determined that DOC did not have cause to remove the Grievant, he had the authority to determine what he deemed to be the appropriate remedy. In light of the above, we find that DOC's assertion that the Award was unnecessarily punitive and that he exceeded his jurisdiction by requiring DOC to pay the Grievant "full back pay . . . [with] no deduction from the back pay for outside earnings . . . during the period he has been out of service"⁵, involves only a disagreement with the Arbitrator's findings, conclusions and remedy. We have held that where a party "merely disagrees with the Arbitrator's findings and the relief granted . . . [it] is not a sufficient basis for concluding that the Arbitrator exceeded [his or] her authority . . .". *District of Columbia Department of Corrections and Doctors Council of the District of Columbia*, __DCR__, Slip Op. No. 718 at p. 3, PERB Case No. 02-A-03 (2003). Thus we cannot reverse the Award on this ground.

As a third basis for review, DOC contends that the Arbitrator exceeded his authority by not addressing all of its arguments in support of the Grievant's termination.⁶ DOC asserts that the evidence presented at the Arbitration hearing clearly supported the Agency's decision to summarily remove the Grievant. (See Memorandum at p. 10). Furthermore, DOC claims that since the Award

⁴*District of Columbia Metropolitan Police Department v. Fraternal Order of Police/Metropolitan Police Department Labor Committee*, 47 DCR 7217, Slip Op. No. 633 at p. 3, PERB Case No. 00-A-04 (2000); See also, *D. C. Metropolitan Police Department and Fraternal of Police/Metropolitan Police Department Labor Committee (On behalf of Angela Fisher)*, 51 DCR 4173, Slip Op. No. 738, PERB Case No. 02-A-07 (2004).

⁵(Award at p. 6)

⁶As stated above, DOC's grounds for terminating the Grievant included violations of departmental regulations concerning the search of visitors, chain of command, courtesy, and failing to contact a supervisor. (See Request at p. 2; See also, Memorandum at p. 14).

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fails to address all the "issues"⁷ presented at arbitration, the case should be remanded or the Award reversed. (See Memorandum at p. 11). In support of this contention, DOC cites *University of the District of Columbia Faculty Association/NEA and the University of the District of Columbia*, 35 DCR 549, Slip Op. No. 98, PERB Case No. 85-A-01 (1985). In that case, the Board found that although two separate grievances had been filed concerning the University's failure to promote the grievant, the Arbitrator only addressed the issues raised in the first of the two grievances. Therefore, the Board ordered that the case be remanded so that the arbitrator could consider the issue raised in the second of the two grievances.

The case before the Board is distinguishable from the *University of the District of Columbia* case. The *UDC* case involved two separate grievances and the Arbitrator failed to consider the issue involved in the second grievance. In the present case, only one grievance was presented to the Arbitrator. Moreover, here, the sole *issue* presented to the Arbitrator was whether there was just cause for the Grievant's removal and, if not, what should be the remedy. That issue was clearly identified and addressed by the Arbitrator. (See Award at p. 2). Furthermore, the *UDC* case does not stand for the proposition that an Arbitrator must address and consider all the arguments made at arbitration. Moreover, we find that DOC is asking this Board to adopt DOC's arguments, findings and conclusions. In view of the above, we believe that DOC's contention amounts to a mere disagreement with the Arbitrator's findings and conclusions. As stated above, a disagreement with the Arbitrator's findings and conclusions does not present a statutory basis for review. Thus, the Board cannot reverse the Award on this ground.⁸

⁷DOC uses the term "issues". However, we believe that DOC is actually referring to its factual contentions and arguments.

⁸FOP counters that the Arbitrator did not exceed his authority by confining his decision solely to the issue submitted to arbitration. Specifically, FOP claims that the sole issue submitted to the Arbitrator was: "Did the Agency have just cause to summarily remove [the] Grievant and then terminate him. If not, what shall be the remedy?" FOP asserts that the Arbitrator was only required to address the issue submitted at arbitration and not all of DOC's arguments and factual contentions.

In support of its argument, the FOP cites *District of Columbia Public Schools and Washington Teachers' Association, Local 6, American Federation of Teachers*, 45 DCR 1283, Slip Op. No. 349, PERB Case No. 93-A-01 (1996). The FOP contends that this case overturns the *University of the District of Columbia Faculty Association/NEA and the University of the District of Columbia* case, cited by DOC. In *DCPS and WTU*, one of the issues concerned whether the grievant had improperly followed the grievance procedure, rendering the grievance not arbitrable. DCPS asserted that the arbitrator had failed to address the issue of arbitrability in the decision. Therefore, DCPS argued that the decision on the merits was "outside the confines of the authority and jurisdiction granted him under the contract." *Id.* at p. 2. There, the Board found that, "arbitral error is within the outcomes that the parties accept when they agree that otherwise unresolved grievances under the collective bargaining contract shall be determined by arbitration. . . . Therefore, [the Board determined] that by neglecting to rule on the issue of arbitrability, the Arbitrator did not exceed his jurisdiction, but rather failed to fully exercise his authority with respect to all the matters over which he had jurisdiction. Such nonfeasance [did] not constitute a statutory basis for review." *Id.* at p. 3. The *DCPS* case involved the Arbitrator's decision not to rule on a

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Finally, DOC claims that "[t]he Arbitrator's competence to hear and decide cases is questionable." (Memorandum at p. 14). While unclear, DOC appears to argue that the Arbitrator exceeded his authority due to his questionable competence. In support of its claim, DOC states that:

While the [Board] does not have an express category for review based upon the mental competence of the arbitrator, such issue can be dealt with in the "exceeds authority," against "public policy."

(Memorandum at p. 15).

DOC argues that the Arbitrator's competence was questionable. As an example, DOC contends that the Arbitrator should have adopted its version of the facts. (See Memorandum at p. 15). DOC also claims that the Arbitrator's lack of competence was due to his health.⁹ (See Memorandum at pgs. 14-15). In addition, DOC contends that the length of time it took for an Award to be issued was evidence of the Arbitrator's incompetence. (See Memorandum at p. 15).

FOP asserts that DOC waived any objection concerning the timeliness of the Award when it failed to raise any objection before the arbitrator. (See Opposition at p. 15).

In the present case, DOC acknowledges that the competence of an arbitrator is not one of the grounds noted in the CMPA for modifying or setting aside an arbitration award. (See Memorandum at p. 15). Nonetheless, DOC argues that the issue of the Arbitrator's competence can be reviewed under the "without, or exceeded, his . . . jurisdiction" standard. However, DOC has failed to present any legal authority to support its argument. Instead, DOC argues that the failure to issue the Award within thirty (30) days is an example of the Arbitrator's questionable competence. (See Request at p. 3). We find that DOC's factual assertions amount to a mere disagreement with the Arbitrator's findings and conclusions and therefore do not present a statutory basis for review. Thus, we cannot reverse the Award on this ground.

B. Whether the Award is contrary to law and public policy.

DOC claims that the Arbitrator's Award is contrary to law and public policy because: (a) it provides for an award of back pay without deductions for interim earnings; (b) the Arbitrator's

procedural issue; but rather to decide the case on the merits. Here, no procedural issue was presented to the Arbitrator. Furthermore, the Arbitrator ruled on the issue that was presented by the parties. Therefore, the Arbitrator exercised his authority with respect to all the matters over which he had jurisdiction. Thus, we find that the DCPS case is not applicable.

⁹DOC notes that the Arbitrator was unable to remain alert during the hearing. In addition, DOC states that the Arbitrator discussed "various significant and debilitating illnesses" with the parties during the hearing. (See Memorandum at pgs. 14-15).

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competence was questionable; (c) it violates the Fourth Amendment of the United States Constitution; and (d) is unnecessarily punitive. (See Memorandum at pgs. 8-18). The Board will address each of these arguments individually.¹⁰

First, DOC asserts that an award of back pay without an offset for interim earnings is contrary to law and public policy because it violates Chapter 11B, Subpart 8, §§ 8.1 and 8.11 of the District Personnel Manual ("DPM").¹¹ Specifically, DOC argues that these provisions require an offset from back pay. (See Memorandum at p. 9). FOP counters that Chapter 11B, Subpart 8, §§ 8.1 and 8.11 of the DPM do not apply to arbitration awards. (See Opposition at p. 7).

The possibility of overturning an arbitration decision on the basis of public policy is an "extremely narrow" exception to the rule that reviewing bodies must defer to an arbitrator's interpretation of the contract. "[T]he exception is designed to be narrow so as to limit potentially intrusive judicial review of arbitration awards under the guise of Public Policy." *American Postal*

¹⁰The Board notes that throughout DOC's Memorandum, DOC has combined the argument that the Award exceeds the Arbitrator's jurisdiction and that he was without authority with the argument that the Award is contrary to law and public policy. However, for the sake of clarity, we have addressed these contentions separately.

¹¹Section 8.1 provides in pertinent part as follows:

The regulations provide that whenever an employee of the District government, on the basis of an administrative determination, or a timely appeal, is found by appropriate authority under applicable law or regulation to have undergone an unjustified or unwarranted personnel action that has resulted in the withdrawal or reduction of all or any pay, allowances, or differentials, he or she is:

1. entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect an amount equal to all or any part of the pay, allowances, or differentials, as applicable, that the employee would have earned during that period if the personnel action had not occurred, less any amount earned through other employment. (see section 8.11) during that period; and
(Emphasis Added.)

Section 8.11 provides in pertinent part as follows:

When an employee has been separated from his or her position by an unjustified or unwarranted personnel action, he or she is entitled to an amount (when this action is corrected) equal to the difference between his or her earnings and the pay he or she would have received had it not been for the separation.

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Workers Union, AFL-CIO v. United States Postal Service, 789 F.2d 1, 8 (D.C. Cir. 1986). We have also held that to set aside an award as contrary to law and public policy, the Petitioner must specify applicable law and definite public policy that mandates that the arbitrator arrive at a different result. See *AFGE, Local 631 and Dept. of Public Works*, 45 DCR 6617, Slip Op. No. 365, PERB Case No. 93-A-03 (1993).¹² In addition, a petitioner must demonstrate that the arbitration award "compels" the violation of an explicit, well defined, public policy grounded in law or legal precedent. See *United Paperworkers Int'l Union, AFL-CIO v. Misco Inc.*, 484 U.S. 29, 43 (1987); see also, *Washington-Baltimore Newspaper Guild, Local 35 v. Washington Post Co.*, 442 F. 2d 1234, 1239 (D.C. Cir. 1971).¹³ Furthermore, as the District of Columbia Court of Appeals has stated, we must "not be led astray by our own (or anyone else's) concepts of 'public policy' no matter how tempting such a course might be in a particular factual setting." *Department of Corrections v. Local No. 246*, 554 A.2d 319, 325 (D.C. 1989).

We have previously considered the issue of whether an arbitrator's failure to provide an offset for interim earnings is contrary to Sections 8.1 and 8.11 of the DPM and have found that these two sections were not applicable to arbitration awards issued prior to February 4, 2005. In *District of Columbia Department of Corrections and Fraternal Order of Police/Department of Corrections Labor Committee (on behalf of Layne, Drummond and Johnson)*, _DCR_, Slip Op. No. 820 at p. 11, n. 9, PERB Case No. 05-A-02 (2006), we noted that:

DOC . . . asserts that the Award violates the . . . (DPM 11B, Subpart 8, §§ 8.1 through 8.16). Specifically, DOC claims that the Award violates the offset provisions contained in § 8.11 of the DPM. (See Request at p. 8). However, we believe that [Sections 8.1 and 8.11 of the DPM are] only applicable to administrative determinations and statutory appeals and not awards issued by an arbitrator. (See § 8.1 - Legal Basis). Therefore, DOC's claim does not present a statutory basis for review. As a result, we cannot reverse the Award on this ground. Also, we note that Chapter 11 of the DPM was amended by adding a new § 1149 - Back Pay. (See 52 DCR 934, 985 (February

¹²See also *MPD and FOP/MPD Labor Committee*, 47 DCR 717, Slip Op. No. 633, PERB Case No. 00-A-04 (2000); and *District of Columbia Public Schools and American Federation of State, County and Municipal Employees, District Council 20*, 34 DCR 3610, Slip Op. No. 156 at p. 6, PERB Case No. 86-A-05 (1987).

¹³ See, *Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee*, 47 DCR 7217, Slip Op. No. 633 at p. 2, PERB Case No. 00-A-04 (2000) (citing *American Federation of Government Employees, Local 631 and Department of Public Works*, 45 DCR 6617, Slip Op. No. 365 at p. 4 n. 4, PERB Case No. 93-A-03 (1998); See, *District of Columbia Public Schools and American Federation of State, County and Municipal Employees, District Council 20*, 34 DCR 3610, Slip Op. No. 156 at p.6, PERB Case No. 86-A-05 (1987).

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4, 2005)). Effective February 4, 2005, the back pay provision of the DPM is now applicable to arbitration awards. (See § 1149.1). The Award in this case was issued in October 2004; therefore, the February 2005 amended provision of Chapter 11, is not applicable to this case.¹⁴

As noted above, Sections 8.1 and 8.11 of the DPM do not apply to arbitration awards issued prior to February 4, 2005. In the present case, the Award issued was issued on May 13, 2004. Therefore the February 2005 amended provision of Chapter 11 is not applicable to this case. DOC has the burden to specify applicable law and definite public policy that mandates that the Arbitrator reach a different result. We find that DOC has failed to do so. Thus, we find that denying an offset for interim earnings in this case does not violate any specific law or public policy. Therefore, DOC's argument does not present a statutory basis for review. As a result we cannot reverse the Award on this ground.

Next, DOC asserts that the Award is contrary to law and public policy because it violates the Fourth Amendment of the United States Constitution.¹⁵ As stated above, DOC had the burden to specify an applicable law or public policy that mandates that the Arbitrator reach a different result. However, DOC does not point to any language in the Fourth Amendment that would mandate a different result in this case. Instead, DOC argues that the Grievant's actions deprived a student of his Fourth Amendment constitutional rights and that the Award, by condoning such behavior, does the same. (See Memorandum at p. 17). Moreover, we believe that by its argument, DOC is requesting that the Board adopt DOC's version of the facts, as well as its conclusions. We find that

¹⁴In addition, the Board found that in the Award involved in Slip Op. No. 820, the Arbitrator had relied on the Back Pay Act, 5 U.S.C. § 5596, for awarding back pay, and that the statute expressly required an offset for interim earnings. Thus, the Board found that the award violated a specific law and, thus, a statutory basis for review did exist. *Id.* at 11. However, the Board also stated as follows:

We want to make it clear that by our holding in this case, we are not saying that an arbitrator can not use his/her equitable power to deny a deduction for an offset of earnings; however, where an arbitrator expressly states (as he has in the present case) that he relied on a specific statute for awarding back pay and that statute expressly requires offset of earnings, the arbitrator must follow the statutory mandate. *Id.* at p. 11.

¹⁵DOC cites the Fourth Amendment to the Constitution, which provides, in part, as follows:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

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this argument amounts to a disagreement with the Arbitrator's findings and conclusions that the Grievant did not participate in the incident. This Board has held that a party's disagreement with an arbitrator's findings of fact does not render an award contrary to law and public policy. See *District of Columbia Department of Corrections and Fraternal Order of Police/Department of Corrections Labor Committee*, 46 DCR 6284, Slip Op. No. 586, PERB Case No. 99-A-02 (1999). Consequently, no statutory basis for review exists. As a result, we cannot reverse the Award on this ground.

DOC also claims that the Arbitrator's lack of competence was contrary to law and public policy. However, DOC cites no specific law or public policy to support its position. Therefore, DOC has not met its burden of specifying any law or public policy that mandates that the Arbitrator reach a different result. Again, we find that DOC's argument represents a mere disagreement with the Arbitrator's findings and conclusions. As stated above, this is not a statutory basis for review. As a result, the Board cannot reverse the Award on this ground.

Lastly, DOC contends that the award is contrary to law and public policy because it is "unnecessarily punitive" to the Agency and "exceptionally unusual". (Memorandum at p. 10). FOP counters that DOC's claim "amounts to no more than a disagreement with the remedy." (Opposition at p. 8). We agree.

In the present case, DOC has not cited any specific law or public policy that the remedy contravenes. Instead, DOC requests that the Board adopt DOC's arguments with respect to the remedy. As previously discussed, this Board has held that a disagreement with an arbitrator's remedy does not render an award contrary to law and public policy. Therefore, DOC has not presented a statutory basis for review.

In view of the above, we find that there is no merit to any of DOC's arguments. Also, we believe that the Arbitrator's conclusions are based on a thorough analysis and cannot be said to be clearly erroneous, or contrary to law or public policy or in excess of his authority under the parties' CBA. Therefore, no statutory basis exists for setting aside the Award.

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ORDER

IT IS HEREBY ORDERED THAT:

- (1) The District of Columbia Department of Correction's Arbitration Review Request is denied.
- (2) Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.**

October 19, 2006

**Government of the District of Columbia
Public Employee Relations Board**

In the Matter of:)

The American Federation of Government)
Employees, Local 872,)

Petitioner,)

and)

District of Columbia,)
Water and Sewer Authority)
(on behalf of Christopher Hawthorne),)

Respondent.)
_____)

PERB Case No. 04-A-12

Opinion No. 828

FOR PUBLICATION

DECISION AND ORDER

I. Statement of the Case

The American Federation of Government Employees, Local 872 ("Union") filed an Arbitration Review Request ("Request"). The Union seeks review of an Arbitration Award ("Award") that sustained the grievance filed by the Union on behalf of Christopher Hawthorne ("Grievant"), but denied the Union's request for attorneys' fees and arbitration costs. The District of Columbia Water and Sewer Authority ("WASA") opposes the Request. WASA is requesting that the Board deny the Union's Request for two reasons. First, WASA claims that the Request is untimely. Second, WASA asserts that the Union has not established that the Award is contrary to law and public policy.

The issues before the Board are whether the Request is timely, and whether "the award on its face is contrary to law and public policy." D.C. Code § 1-605.02(6) (2001 ed.).

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II. Discussion

On March 21, 2003 an altercation occurred between the Grievant and the Director of Customer Service. (See Award at p. 4). On June 20, 2003, WASA issued a determination discharging the Grievant for insubordination. (See Award at p. 12). The Union grieved the matter, asserting that the discharge proposal was untimely. (See Award at p. 12). The Union invoked arbitration on July 22, 2003. (See Award at p. 12).

The issue before the Arbitrator was: "whether or not [WASA] had just cause to propose the discharge of Grievant Christopher Hawthorne. If not, what shall the remedy be?" (Award at p. 1).

At arbitration, WASA argued that the disciplinary proposal had been issued in a timely manner. (See Award at p. 12). The Union countered that the discharge proposal was untimely. (See Award at p. 16). In addition, the Union asked that it be awarded arbitration costs and attorney's fees. (See Award at p. 20).

In an Award dated April 30, 2004, Arbitrator Spilker concluded that WASA had failed to comply with the parties' collective bargaining agreement ("CBA") by failing to conduct an investigation into the matter and imposing discipline in a timely manner. (See Award at p. 24). As a result, the Arbitrator directed that the disciplinary action be rescinded. (See Award at p. 24). However, the Arbitrator denied the Union's request for costs and attorney's fees. (See Award at p. 24).

In their Request, the Union claims that the Arbitrator should have awarded attorney's fees in the "interest of justice". The Union asserts that the Award is contrary to law and public policy because it violates D.C. Code § 1-606.08. (Request at pgs. 4-6). In its Opposition, WASA counters that the Request is untimely and the Award is not contrary to law and public policy. (Opposition at p. 3).¹

With respect to timeliness, WASA asserts that "the award issued by Arbitrator Spilker was served via facsimile on the parties on April 30, 2004. As such, Board Rule 501.4 is not applicable and the twenty-day limitations period for seeking review commenced on April 30, 2004. Furthermore, the Union did not file its [Request] until May 24, 2004." (Respondent's Opposition at p. 3).

¹The Board notes that the following three additional pleadings were filed: (a) the Union filed a Reply to Respondent's Opposition to Petitioner's Arbitration Review Request; (b) Respondent filed a Motion to Strike Petitioner's Reply, or in the Alternative Motion to file a Surreply; and (c) Respondent's Surreply.

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Board Rules 538.1, 501.16, 501.4 and 501.5 provide in relevant part as follows:

538.1 - Filing

A party to a grievance arbitration proceeding who is aggrieved by the arbitration award may file a request for review with the Board not later than twenty (20) days after service of the award.

501.16 - Methods of Service

Service of pleadings shall be complete on personal delivery during business hours; depositing of the message with a telegraph company, charges prepaid; depositing the document in the United States mail, properly addressed, first class postage prepaid; or by facsimile transmission.

501.4 - Computation - Mail Service

Whenever a period of time is measured from the service of a pleading and service is by mail, five (5) days shall be added to the prescribed period.

501.5 - Computation - Weekends and Holidays

In computing any period of time prescribed by these rules, the day on which the event occurs from which the time begins to run shall not be included. . . . Whenever the prescribed time period is eleven (11) days or more, [Saturdays, Sundays and District of Columbia Holidays] shall be included in the computation.

In the present case, Arbitrator Spilker issued her Award on April 30, 2004. (See Award at p. 27). There is no dispute that the Award was served on the parties by facsimile. As a result, WASA argues that: (1) the Award was sent via facsimile on April 30, 2004; and (2) pursuant to 501.16, service was complete on that day. (See Opposition at p. 3). In addition, WASA asserts that pursuant to Rule 538.1, the Union was required to file their Request within twenty days after the service date, or by May 20, 2004. (See Opposition at p. 3). Furthermore, WASA contends that the Union did not file their Request until May 24, 2004. (See Opposition at p. 3). Thus, WASA claims that the Union's May 24, 2004 filing was four (4) days late.

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In their Request, the Union acknowledges that the Award was issued on April 30, 2004.² (See Union's Brief at p. 1). In addition, the Union, in its Reply to the Respondent's Opposition, indicates that the Award was sent via facsimile on April 30, 2004 at 10:48 p.m. (See Reply at p. 1).³ However, the Union contends that it did not receive the Award until May 3, 2004. (See Reply at p. 2). Citing Board Rule 538.1, the Union argues that since the Award was not received until May 3, 2004, the Union was required to file their Request within twenty days after the May 3, 2004, receipt date, or by May 24, 2004. (See Reply at p. 3). Thus, the Union claims that May 24, 2004 was the last day to file its Request. (See Reply at p. 3). For the reasons discussed below, we disagree.

"[The Union's] timeliness argument is based on their belief that the receipt date is the operative factor which triggers the computation of the twenty-day filing requirement noted in Board Rule 538.1. However, Board Rule 538.1 states that an arbitration review request must be filed by 'no later than twenty (20) days after service of the award.' (Emphasis added). The twenty day limitations period for review of an award commences after service of the award, not when it is received by the party." *District of Columbia, Water and Sewer Authority and AFGE Local 872, DCR*, Slip Op. No. 843 at p. 5, PERB Case No. 05-A-10 (2006); See also *Health and Hosp. Public Benefit Corp. And IBPO, Local 446*, 49 DCR 4954, Slip Op. No. 549, PERB Case No. 98-A-03 (1998). Five days may be added pursuant to 501.4, if service is by mail. However, in the present case service was by facsimile; therefore Board Rule 501.4 is not applicable. See *D.C. Gen. Hosp. and Doctor's Council of the D.C. Gen. Hosp.*, Slip Op. No. 493, PERB Case No. 96-A-08 (1996). Since it is undisputed that the Award was sent by facsimile on April 30, 2004, the Union was required to submit their pleading no later than May 20, 2004. Board Rules governing the initiation of actions before the Board are jurisdictional and mandatory. As such, they provide the Board with no discretion or exception for extending the deadline for initiating an action. See *Public Employee Relations Board v. D.C. Metropolitan Police Department*, 593 A. 2d 641 (D.C. 1991). Therefore, the Board finds the Union's May 24, 2004, filing was untimely. Thus, the Union's Request is denied.

²The Arbitrator's Award, at page 27, indicates a date of August 30, 2004. However, the Union acknowledges in its Request that the Award was issued on April 30, 2004. (See Brief at p. 1). Moreover, neither party has challenged the April 30, 2004, date. In addition, the Board notes that the date actually indicated by the time-and-date stamp of the facsimile was April 30, 2004.

³Board Rule 538 does not prohibit the Board from taking into consideration supplemental pleadings. Therefore, the Board acknowledges receipt of the Union's Reply. In addition, WASA's Motion to Strike is denied.

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ORDER

IT IS HEREBY ORDERED THAT:

- (1) The American Federation of Government Employees, Local 872's Arbitration Review Request is denied.
- (2) Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

September 29, 2006

**Government of the District of Columbia
Public Employee Relations Board**

In the Matter of:)

Vartan Zenian,)

Complainant¹,)

v.)

American Federation of State, County)
and Municipal Employees, Local 2743,)

and)

Department of Insurance, Securities and)
Banking,)

Respondents.)

PERB Case No. 04-U-30

Opinion No. 832
Motion for Interlocutory Appeal

PERB Case No. 03-RD-02

FOR PUBLICATION

Vartan Zenian, et al.,)

Petitioners,)

and)

American Federation of State, County)
and Municipal Employees, Local 2743,)

Labor Organization/Respondent.)

¹An individual who files a decertification petition is referred to as a "petitioner" while one filing an unfair labor practice complaint is identified as a "complainant". A union named in a decertification matter is referred to as a labor organization. A party accused of committing unfair labor practices or violating the standards of conduct for a labor organization is designated as a "respondent". The Department of Insurance, Securities and Banking is not named as a party in the decertification petition; however, the Department of Insurance, Securities and Banking is a named respondent in the unfair labor practice complaint.

Decision and Order
Concerning Interlocutory Appeal
PERB Case No. 04-U-30 and PERB Case No. 03-RD-02
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DECISION AND ORDER

I. Statement of the Case:

Vartan Zenian, Karen Moore and Yvette Alexander ("Petitioners"), filed a Petition for Decertification, requesting that the Public Employee Relations Board ("Board") decertify the American Federation of State, County and Municipal Employees, Local 2743 ("AFSCME" or "Union") as the exclusive bargaining representative for a group of employees employed by the District of Columbia Department of Insurance, Securities and Banking ("DISB" or "Agency"). The matter was referred to a Hearing Examiner. AFSCME filed a Motion to Dismiss. Subsequently, Vartan Zenian filed an unfair labor practice complaint which raised allegations similar to those in the decertification petition. The Hearing Examiner: (a) denied AFSCME's motion to dismiss; (b) consolidated the two matters; and (c) scheduled an evidentiary hearing. Vartan Zenian did not attend a February 2, 2006 scheduled hearing. As a result, on September 13, 2006 the Hearing Examiner: (1) issued a Report and Recommendation in the decertification case; (2) vacated the portion of her previous Order which consolidated the two matters; and (3) issued an Order directing Mr. Zenian to show cause why he didn't appear at the February 2, 2006, hearing to prosecute his unfair labor practice complaint.

On September 29, 2006, AFSCME filed a "Request for Leave to File an Interlocutory Appeal," requesting that the Board grant AFSCME leave to file an interlocutory appeal concerning the Hearing Examiner's Show Cause Order directing that Mr. Zenian show cause why he failed to appear at the February 2, 2006 hearing.² In addition, AFSCME is asking the Board to remove the Hearing Examiner from presiding over PERB Case No. 04-U-30. On October 12, 2006, Mr. Zenian filed an opposition to AFSCME's request. AFSCME's submission and Mr. Zenian's opposition are before the Board for disposition.

II. Discussion:

²"The Hearing Examiner concluded at least preliminarily, that there was good cause for Mr. Zenian's absence from the February 2, 2006 proceeding [and that] [u]pon consideration and reflection, she believes she should have delayed the [unfair labor practice] portion of the case and allowed Mr. Zenian to submit good cause why a continuance should be granted under the emergency circumstances [he alleged]. In order to meet his burden of proof, Mr. Zenian must establish that he is a victim of a standard of conduct and/or unfair labor practice. He was not given the opportunity to do so. Further, he did not authorize anyone to act on his behalf. Based on the unforeseen family emergency, Mr. Zenian preliminarily has satisfied the requirement under [Board] Rule 550.6 that a continuance will be granted during the five day period immediately preceding the date of the hearing only under 'the most extraordinary circumstances'." (September 13, 2006 Order issued by Hearing Examiner Hochhauser at p. 4).

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Concerning Interlocutory Appeal
PERB Case No. 04-U-30 and PERB Case No. 03-RD-02
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AFSCME disagrees with the Hearing Examiner's ruling vacating the Order which consolidated the two cases and directing Mr. Zenian to show cause for his absence, and believes that it should be allowed to file an interlocutory appeal concerning the Hearing Examiner's ruling.

Board Rule 554.1 provides as follows:

Unless expressly authorized by the Board, interlocutory appeals to the Board of rulings by the Executive Director, Hearing Examiner or other Board agents shall not be permitted. Exceptions to such rulings shall be considered by the Board when it examines the full record of the proceedings.

Under Board Rule 554.1, the Board will: (1) not allow interlocutory appeals unless expressly authorized by the Board and (2) consider a party's exception to a ruling when it examines the full record of the proceeding. AFSCME asserts that in the present case, the Board should authorize the Union to file an interlocutory appeal because:

Together, these cases have dragged on for more than three years. The unfair labor practice has been before Hochhauser since March of 2005. That she failed to read the compliant until after the close of the hearing is an error entirely of her own making. . . . The Union must not be forced to suffer through a form of double jeopardy and additional litigation costs to repair Hochhauser's mistakes and to satisfy her attempts to bend over backwards to support this pro se litigant. . . . There is simply no reason that this case should not have been finally decided on the record presented.

Again, this is not an instance where the complainant has sought relief from a procedural error. Instead, this is an instance where the Hearing Examiner has, in a sense, granted an interlocutory appeal that the complainant never filed. . . .

This attempt to retry the case is beyond the authority of a hearing examiner and is wholly inappropriate and unfair. The sole expressed basis for the order is the Hearing Examiner's own admitted incompetence resulting from her failure to read the complaint. Under Hochhauser's direction, the Union is apparently subject to limitless liability. Whether Hochhauser's order is the result of her own economic self-interest in prolonging this matter; sheer incompetence;

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Concerning Interlocutory Appeal
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or simply her unbridled hostility to the Union is unclear. In any event, to allow her jurisdiction to continue over this matter imposes an injustice on the union. The Union requests that the Board conduct its own *de novo* review of the existing record and rule on the unfair labor practice charge. (AFSCME's Motion at pgs. 6-7).

In view of the above, AFSCME is requesting that the Board: (1) grant its request for interlocutory appeal; (2) review the Hearing Examiner's ruling bifurcating the two cases and ordering Mr. Zenian to show cause why the unfair labor practice complaint should not be dismissed; (3) conduct its own *de novo* review of the record and rule on the unfair labor practice charge and (4) remove the Hearing Examiner from this case.

Mr. Zenian filed an opposition to AFSCME's motion. In his opposition, Mr. Zenian states the following:

Although AFSCME fills its motion with criticism and personal attacks on the Hearing Examiner, the record shows that AFSCME itself passed up an opportunity to correct the Hearing Officer's misunderstanding. As the Hearing Officer's September 13, 2006 [order] shows, the Hearing Officer was told by Yvette Alexander that she was co-complainant in this case, and the Hearing Officer proceeded on the basis that Alexander could present complainant's case. . . .AFSCME chose to be silent until the hearing closed, whereupon it filed a written closing argument arguing that Zenian was the sole complainant

The Hearing Officer's misunderstanding was not due to negligence, as AFSCME charges, but followed from the fact that three employees served as co-petitioners in the consolidated decertification petition, 02-RD-02, and that co-petitioner Alexander understood and stated that she was a co-complainant in this case as well. Rather than correcting this at the hearing, AFSCME held back to try to entrap the Hearing Examiner, the Complainant and the unfair labor practice process by only objecting to Zenian's February 2 absence after the close of the February 2 hearing.

The Hearing Officers' (*sic*) show cause order, to allow a ruling as to whether the unfair labor practice/standards of conduct hearing should be rescheduled, is reasonable and appropriate. There is no basis for AFSCME's request to take this matter away from the Hearing

Decision and Order
Concerning Interlocutory Appeal
PERB Case No. 04-U-30 and PERB Case No. 03-RD-02
Page 5

Examiner prematurely. (Complainant's Opposition to AFSCME's Motion at pgs. 1-2).

After reviewing the pleadings, we find that at the November 12, 2004 hearing concerning the decertification petition, AFSCME's Counsel indicated that the Petitioners had also filed an unfair labor practice complaint which raised allegations against the Union and Agency that "incorporates by reference everything that was in the decert[ification] petition". (Tr I, 14). In response to AFSCME's statement, the Hearing Examiner discussed consolidation with the parties, and gave them an opportunity to brief the issue. Subsequently, "[o]n February 1, 2005, the Hearing Examiner issued an Order to Show Cause why the [unfair labor practice complaint] and the decertification cases should not be consolidated. [The Hearing Examiner] noted that [the] Complainants were raising similar allegations in both matters, that the evidence needed to support the claims were similar and that the relief was the same. AFSCME opposed consolidation based on its contention that the decertification petition should be dismissed. [The] Petitioners did not oppose consolidation. By Order dated March 7, 2005, the matters were consolidated and a hearing was scheduled." (September 13, 2006 Order issued by Hearing Examiner Hochhauser at p. 2).

We find that AFSCME's argument concerning the question of consolidation raises no new arguments and is a repetition of the argument considered and rejected by the Hearing Examiner. Disagreement with a Hearing Examiner ruling does not justify the Board taking the extraordinary step of allowing AFSCME's request for interlocutory appeal. Therefore, we deny AFSCME's request for interlocutory appeal. However, we point out that once the Hearing Examiner issues her Report and Recommendation in this matter (PERB Case No. 04-U-30), all of the parties will have an opportunity to file exceptions to the Hearing Examiner's findings and to challenge this and any other ruling at the end of the proceeding.

We now turn to AFSCME's request that the Hearing Examiner be removed from this case. Board Rule 557.1 provides that "[a] hearing examiner or Board member shall withdraw from proceedings whenever the person has a conflict of interest." In the present case, AFSCME has not presented any evidence that suggests that the Hearing Examiner has a conflict of interest. Instead, AFSCME argues that the Hearing Examiner should not allow Mr. Zenian to show cause for his absence at the February 2, 2006 hearing because "[t]here is simply no reason that this case should not have been finally decided on the record presented." (See AFSCME's Motion at p. 7). We find that AFSCME's reason for requesting that the Hearing Examiner be removed from this case is based on its disagreement with the Hearing Examiner's ruling. A disagreement with the Hearing Examiner's ruling does not satisfy the requirement of Board Rule 557.1. Therefore, we deny AFSCME's request that the Hearing Examiner be removed.

The Board is deeply offended by the language used by counsel for AFSCME in its motion.

Decision and Order
Concerning Interlocutory Appeal
PERB Case No. 04-U-30 and PERB Case No. 03-RD-02
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We believe that personal attacks made against employees of the Board or the Board's hearing examiners do not serve any parties' interest and will not be tolerated. We expect parties to focus on presenting facts and arguments and to refrain from such personal attacks.

For the reasons discussed, we deny AFSCME's requests: (a) for interlocutory appeal;³ (b) that the Board conduct its own de novo review of the existing record and rule on the unfair labor practice; and (c) that the Hearing Examiner be removed from this case.

ORDER

IT IS HEREBY ORDERED THAT:

1. The American Federation of State, County and Municipal Employees, Local 2743's ("AFSCME") "Request for Leave to File an Interlocutory Appeal," is denied.
2. AFSCME's request that the Hearing Examiner be removed from this case, is denied.
3. AFSCME's request that the Board conduct its own de novo review of the existing record and rule on the unfair labor practice charge, is denied.
4. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC RELATIONS BOARD
Washington, D.C.

December 20, 2006

³In light of this ruling, we will not consider AFSCME's request that we review the Hearing Examiner's ruling bifurcating the two cases and ordering Mr. Zenian to show cause why the unfair labor practice complaint should not be dismissed.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

In the Matter of:)

American Federation of State,)
County and Municipal Employees,)
D.C. Council 20, Local 2401,)

Labor Organization,)

and)

District of Columbia Office of)
Human Rights,)

Agency.)

PERB Case No. 05-RC-05

Opinion No. 833

FOR PUBLICATION

**DECISION ON UNIT DETERMINATION AND
DIRECTION OF ELECTION**

I. Statement of case

The American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2401 ("AFSCME" or "Petitioner"), filed a Recognition Petition ("Petition") in the above-captioned proceeding. AFSCME seeks to represent, for purposes of collective bargaining, a consolidated unit of unrepresented professional and non-professional employees employed by the District of Columbia Office of Human Rights. The Petition was accompanied by a showing of interest and a copy of the Petitioner's Constitution. (See Board Rules 502.1(d) and 502.2).

After conducting an investigation, the Board's Executive Director determined that AFSCME satisfied the showing of interest requirement of Board Rule 502.2. As a result, on February 17, 2006, Notices concerning the Petition were issued for conspicuous posting where Notices to employees are normally located at the District of Columbia Office of Human Rights. The Notices indicated that requests to intervene and/or comments should be filed in the Board's Office no later than March 6, 2006. On February 22, 2006, the Office of Labor Relations and Collective Bargaining ("OLRCB") on behalf of the District of Columbia Office of Human Rights confirmed that the Notices were posted. In addition, OLRCB submitted a comment. In their comment, OLRCB indicated that the agency does not oppose the Petition. No other comments were received. AFSCME's Petition is before the Board for disposition.

Decision on Unit Determination
and Direction of Election
PERB Case No. 05-RC-05
Page 2

II. Discussion:

AFSCME seeks to represent the following proposed unit:

All professional and non-professional employees employed by the District of Columbia Office of Human Rights, excluding management officials, supervisors, confidential employees, employees engaged in personnel work in other than a purely clerical capacity and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.

D.C. Code § 1-617.09(a) (2001 ed.), requires that a community of interest exist among employees in order for a unit to be found appropriate by the Board for collective bargaining over terms and conditions of employment. An appropriate unit must also promote effective labor relations and efficiency of agency operations.

Our review of the Petition, the agency's comments and attached exhibits reveal that the proposed unit consists of the following employee positions: EEO specialists-investigators, program support assistant, compliance officer and hearing examiner. All of these employees share a common mission within the District of Columbia Office of Human Rights. No other labor organization represents these employees. Also, there is no collective bargaining agreement in effect covering any of these employees.

In view of the above, we believe that sufficient factors exist for the Board to find that these employees share a community of interest. Such a unit of professional and non-professional employees employed by the District of Columbia Office of Human Rights that share a common purpose and mission would promote effective labor relations and efficiency of agency operations and thereby constitute an appropriate unit under the Comprehensive Merit Personnel Act.

Regarding the question of representation, we order that an election be held to determine the will of the eligible employees (in the unit described above), regarding their desire to be represented by AFSCME, Local 2401 for purposes of collective bargaining with the District of Columbia Office of Human Rights. Also, in order to conform with the requirements of D.C. Code § 1-617.09(b) (2001 ed.) and Board Rule 510.5 (concerning the inclusion of professional and non-professional employees in the same unit), we order that all eligible professional employees indicate their choice on separate ballots as to: (1) whether they desire to be represented for bargaining on terms and conditions of employment by AFSCME, Local 2401, and (2) whether they wish to be included in a consolidated unit with non-professional employees. Eligible non-professional employees, in the same election, shall indicate their choice only as to the former question. Finally, we believe that a mail ballot election is appropriate in this case.

Decision on Unit Determination
and Direction of Election
PERB Case No. 05-RC-05
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ORDER

IT IS HEREBY ORDERED THAT:

1. The Following unit is an appropriate unit for collective bargaining over terms and conditions of employment:

All professional and non-professional employees employed by the District of Columbia Office of Human Rights, excluding management officials, supervisors, confidential employees, employees engaged in personnel work in other than a purely clerical capacity and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.

2. A mail ballot election shall be held in accordance with the provisions of D.C. Code §§ 1-617.09 (b) and 1-617.10. (2001 ed.) and Board Rules 510-515, in order to determine whether or not: (1) all eligible employees desire to be represented for propose of collective bargaining on compensation and terms and conditions of employment, by either the American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2401 or No Union; and (2) all eligible professional employees wish to be included in a consolidated unit with non-professional employees. Eligible non-professional employees, in the same election, shall indicate their choice only as to the former question.

3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

March 28, 2006

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

In the Matter of:)

American Federation of State,
County and Municipal Employees,
D.C. Council 20, Local 2401,)

Labor Organization,)

and)

District of Columbia Office of Risk
Management,)

Agency.)

PERB Case No. 05-RC-06

Opinion No. 834

FOR PUBLICATION

**DECISION ON UNIT DETERMINATION AND
DIRECTION OF ELECTION**

I. Statement of the case:

On June 10, 2005, the American Federation of State, County and Municipal Employees District of Columbia Council 20, Local 2401 ("AFSCME" or "Petitioner"), filed a Recognition Petition in the above-captioned proceeding. AFSCME seeks to represent, for purposes of collective bargaining, a consolidated unit of unrepresented professional and non-professional employees employed by the District of Columbia Office of Risk Management. The Petition was accompanied by a showing of interest and a copy of the Petitioner's Constitution. (See Board Rules 502.1(d) and 502.2).

After conducting an investigation, the Board's Executive Director determined that AFSCME satisfied the showing of interest requirement of Board Rule 502.2. As a result, on September 14, 2005, Notices concerning the Petition were issued for conspicuous posting where Notices to employees are normally located at the District of Columbia Office of Risk Management. The Notices indicated that requests to intervene and/or comments should be filed in the Board's Office no later than October 13, 2005. The District of Columbia Office of Risk Management, confirmed that the Notices were posted. In addition, the Office of Labor Relations and Collective Bargaining ("OLRCB") submitted a comment on behalf of the agency. In their comment, OLRCB noted that the agency does not oppose the Petition. There were no other comments received. AFSCME's Petition is before the Board for disposition.

Decision and Order
PERB Case No. 05-RC-06
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II. Discussion:

AFSCME seeks to represent the following proposed unit:

All professional and non-professional employees employed by the District of Columbia Office of Risk Management, excluding management officials, supervisors, confidential employees, employees engaged in personnel work in other than a purely clerical capacity and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.

D.C. Code §1-617.09(a) (2001ed.), requires that a community of interest exist among employees in order for a unit to be found appropriate by the Board for collective bargaining over terms and conditions of employment. An appropriate unit must also promote effective labor relations and efficiency of agency operations.

Our review of the Petition, the agency's comments and attached exhibits reveal that the proposed unit consists of the following employee positions: staff assistant, claims adjuster, clerical assistant, risk control specialist, claims specialist/works comp, claims investigator and claims analyst employed by the District of Columbia Office of Risk Management. These employees share a common organizational structure and mission within the District of Columbia Office of Risk Management. No other labor organization represents these employees. Also, there is no collective bargaining agreement in effect covering these employees.

In view of the above, we believe that sufficient factors exist for the Board to find that these employees share a community of interest. Such a unit of all professional and non-professional employees at the District of Columbia Office of Risk Management that share a common mission, would in our view, promote effective labor relations and efficiency of agency operations and thereby constitute an appropriate unit under the Comprehensive Merit Personnel Act.

Regarding the question of representation, the Board orders that an election be held to determine the will of the eligible employees (in the unit described above), regarding their desire to be represented by AFSCME, Local 2401 for purposes of collective bargaining with the District of Columbia Office of Risk Management. Also, in order to conform with the requirements of D.C. Code §1-617.09(b) (2001 ed.) and Board Rule 510.5 (concerning the inclusion of professional employees and non-professional employees in the same unit), eligible professional employees shall indicate their choice on separate ballots as to: (1) whether they desire to be represented for bargaining on terms and conditions of employment by AFSCME, Local 2401, and (2) whether they wish to be included in a consolidated unit with non-professional employees. Eligible non-professional employees, in the same election, shall indicate their choice only as to the former question. Finally, we believe that a mail ballot election is appropriate in this case.

Decision and Order
PERB Case No. 05-RC-06
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ORDER

IT IS HEREBY ORDERED THAT:

1. The Following unit is an appropriate unit for collective bargaining over terms and conditions of employment:

All professional and non-professional employees employed by the District of Columbia Office of Risk Management, except management officials, supervisors, confidential employees, employees engaged in personnel work in other than a purely clerical capacity and employees, engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.

2. A mail ballot election shall be held in accordance with the provisions of D.C. Code §§ 1-617.09(b) and 1-617.10 (2001 ed.), and Board Rules 510-515, in order to determine whether or not: (1) all eligible employees desire to be represented for bargaining on terms and conditions of employment by either the American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2401 or No Union; and (2) all eligible professional employees wish to be included in a consolidated unit with non-professional employees. Eligible non-professional employees, in the same election, shall indicate their choice only as to the former question.

3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

March 28, 2006

DC RENTAL HOUSING COMMISSION

2007 RESOLUTION OF THE RENTAL HOUSING COMMISSION

for

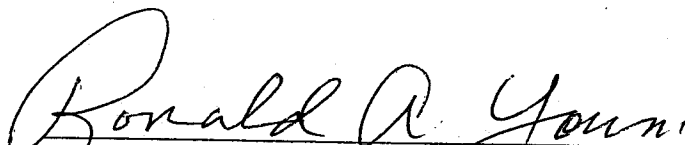
**THE CHANGE IN THE CONSUMER PRICE INDEX, URBAN WAGE EARNERS
AND CLERICAL WORKERS – (CPI-W), WASHINGTON-BALTIMORE,
DC-MD-VA-WV, ALL ITEMS**

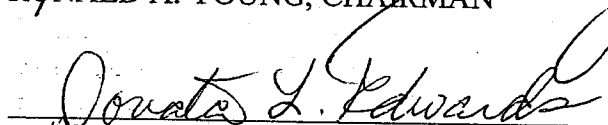
It is hereby resolved by the Rental Housing Commission this 1st day of March, 2007

1. Whereas, effective January 1998, the United States Department of Labor eliminated the "Washington, D.C. Standard Metropolitan Statistical Area Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for All Items," which was published bimonthly in odd numbered months ending with November each year, and initiated the "Consumer Price Index, Urban Wage Earners and Clerical Workers – (CPI-W), Washington-Baltimore, DC-MD-VA-WV, All Items," which includes the city of Washington, D.C., and the states of Maryland, Virginia, and West Virginia, hereinafter referred to as Washington-Baltimore, that is published bimonthly in odd numbered months ending in November each year;
2. Whereas, pursuant to Section 206(b) of the Rental Housing Act of 1985, D.C. Law 6-10, the Rental Housing Commission is mandated to determine the change, during the twelve months of calendar year 2006 in the Washington-Baltimore Standard Metropolitan Statistical Area Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for All Items;
3. Whereas, pursuant to the requirements of Section 206(b) of the Rental Housing Act of 1985, D.C. Law 6-10, the Rental Housing Commission used the reported CPI-W for calendar year 2006 in the Washington-Baltimore Standard Metropolitan Statistical Area (SMSA) Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for All Items;
4. Be it resolved that the Commission determined the 2006 change in the CPI-W for the Washington-Baltimore SMSA was 3.5%.
5. Pursuant to the requirements of Section 202(a)(3) of the Rental Housing Act of 1985, D.C. Law 6-10:¹
 - (a) The Rental Housing Commission hereby certifies that the rent adjustment of general applicability, to become effective on May 1, 2007 shall not exceed 3.5% of the rents in effect on April 30, 2007; and

¹ As amended by D.C. Law 16-145, the "Rent Control Reform Amendment Act of 2006." See 53 D.C. Register 6688 (Aug. 18, 2006)

- (b) The Rental Housing Commission adopts the Certification and Notice of Rent Adjustment of General Applicability, effective May 1, 2007, in the form annexed hereto and directs its transmittal to the District of Columbia Office of Documents for publication in the District of Columbia Register.


RONALD A. YOUNG, CHAIRMAN


DONATA L. EDWARDS, COMMISSIONER

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION
CERTIFICATION AND NOTICE OF RENT ADJUSTMENT OF GENERAL
APPLICABILITY**

EFFECTIVE MAY 1, 2007

1. Pursuant to Section 206(b) of the Rental Housing Act of 1985, D.C. Law 6-10, the Rental Housing Commission shall determine an adjustment of general applicability in the rent of the rental units established by Section 206(a), which shall be equal to the change during the previous calendar year in the Washington, D.C. Standard Metropolitan Statistical Area (SMSA)¹ Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for All Items.
2. Pursuant to Section 206(b) of the Rental Housing Act of 1985, the Commission determined that the Washington-Baltimore (SMSA) CPI-W for All Items increased by 3.5% during the previous calendar year.
3. Accordingly, the Rental Housing Commission determined that the change during calendar year 2006, in the Washington-Baltimore SMSA CPI-W for All Items was 3.5%.
4. Pursuant to the requirements of Section 202(a)(3) of the Rental Housing Act of 1985, D.C. Law 6-10, the Rental Housing Commission hereby certifies and gives notice that the rent adjustment of general applicability to become effective on May 1, 2007, shall not exceed 3.5% of the rent in effect on April 30, 2007.

¹. The Rental Housing Commission and the Rent Administrator are mandated by the Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE § 42-3501.01(2001), to annually calculate and publish in the D.C. Register the percentage change in the Washington, D.C., Standard Metropolitan Statistical Area Consumer Price Index for All Items. D.C. OFFICIAL CODE §§ 42-3502.02(a)(3), 3502.04(k), 3502.06(b) (2001).

The Act does not comply with two changes in the publication by the Department of Labor (DOL), Bureau of Labor Statistics (BLS), which publishes the CPI-W statistics and determines what areas will be in the Standard Metropolitan Statistical Area. First, DOL/BLS enlarged the geographical areas included with Washington, D.C., in the local Standard Metropolitan Statistical Area and second, the name of the DOL/BLS statistical document was changed. Originally, the Standard Metropolitan Statistical Area included only three jurisdictions, which were Washington, D.C., Maryland, and Virginia. The statistical document issued by DOL/BLS, and used by both the Rent Administrator and the Rental Housing Commission was named "Consumer Price Index, Urban Wage Earners and Clerical Workers – (CPI-W), Washington, DC-MD-VA, All Items." That publication was discontinued, and now the DOL/BLS publication is the "Consumer Price Index, Urban Wage Earners and Clerical Workers-(CPI-W), Washington-Baltimore, DC-MD-VA-WV, All Items." The difference is the inclusion of the state of West Virginia and the city of Baltimore, Maryland into the Standard Metropolitan Statistical Area with Washington, D.C.

Office of the Secretary of the
District of Columbia

March 9, 2007

Notice is hereby given that the following named persons have been appointed as Notaries Public in and for the District of Columbia, effective on or after April 1, 2007.

Dews, Brenda E.	Rpt Dews Management Services 1776 I St, NW 9thFl 20006
Forrest, Judy L.	Rpt DOJ/Civil Div/Rm 1155-12 1331 Pa Ave, NW 20004
Griggs, Paulette M.	Rpt Session Title Services 1150 Conn Ave, NW#900 20036
Prieto, Zully	Rpt O A S Staff F C U 1889 F St, NW 20006
Slaughter, Sylena L.	Rpt Thelen Reid Brown et al 701 8 th St, NW#800 20001
Stancil, Mary C.	Rpt 7012 8 th St, NW 20012
Taylor, Elizabeth	Rpt Baker Donelson et al 555 11 th St, NW 6thFl 20004

**Serve DC
GRANT REVIEW OPPORTUNITY**

**Serve DC Seeks Grant Reviewers
For 2007 Learn and Serve America Mini-Grant Funding Competitions**

Serve DC is seeking individuals to review grant proposals for two 2007 Learn and Serve America mini-grant funding competitions. This is an excellent opportunity to network with colleagues in the national service and education fields; learn more about the grant-making process; develop your own grant-writing skills; learn about exciting service-learning initiatives happening in local schools and community-based organizations; and contribute your knowledge and experience to Serve DC's efforts to select high-quality service-learning programs for Learn and Serve America mini-grant funding.

What does a grant reviewer do? Grant reviewers will help to evaluate funding applications for the 2007 Learn and Serve America Community-Based and Homeland Security School-Based mini-grant competitions. Reviewers read, score, and evaluate proposals, and discuss their findings with a small group of reviewers and a facilitator. The panel then comes to consensus to rank the proposals according to quality and recommend them for the next level of review.

What qualifications should reviewers have? Serve DC is looking for a diverse group of reviewers--males and females of all ages, races and ethnicities--that have experience with national service, education, or community-based programs, and grant writing. Serve DC would like to recruit reviewers experienced with service-learning, education, youth development, or national service. For example, reviewers may be community service practitioners, educators, students, youth participants, national service alumni, people working in foundations, or individuals working on public policy issues.

Reviewers must be comfortable reading a large volume of material in a short period of time and providing analysis in a small group setting.

Can members currently serving in AmeriCorps or any other streams of service serve as reviewers? No, you must have completed your AmeriCorps service before being selected as a reviewer. Alumni of the AmeriCorps programs are strongly encouraged to apply to serve as reviewers. AmeriCorps members must have completed service by January 1, 2007.

Can people who work for a Corporation for National and Community Service-funded program serve as a reviewer? Yes, people who work for organizations affiliated with other Learn and Serve America, AmeriCorps or national service programs may serve as reviewers. For instance, an individual who works for an organization that hosts a VISTA volunteer may review AmeriCorps applications. However, people cannot serve as a reviewer for the AmeriCorps programs if they work for an organization that is being considered for funding in this competition.

What is the time commitment?

Serve DC is seeking three grant reviewers per competition (a total of six). Serve DC will consider a reviewer for both grant reviews. Reviewers will participate in a short training when applications are picked up. The period between the training session and the consensus session will be dedicated to reviewing and scoring the proposals. After the review period, reviewers

will convene for a consensus session with a facilitator to rank the applications. When you apply, please indicate the review session you are interested in participating in. **Also, please indicate if you are interested in participating in both review sessions.**

Learn and Serve Community-Based Mini-Grant Review

Reviewers must be available on **April 18, 2007 (5:00pm-6:00pm)** and **April 23, 2007 (5:00pm-7:00pm).**

Learn and Serve Homeland Security School-Based Review

Reviewers must be available on **May 2, 2007 (5:00pm-6:00pm)** and **May 7, 2007 (5:00pm-7:00pm).**

What are the benefits to reviewers? The grant review experience is an excellent opportunity to meet and network with colleagues in the national service and service-learning fields; find out about exciting programming and trends in service-learning and youth programs; develop a deeper understanding of the grant-writing and grant-making processes; and contribute experience to the selection of high-quality programs for the District of Columbia. Reviewers will receive a stipend of \$ 100 per grant review (not to exceed \$200 per person). Reviewers must participate in a training and consensus session for the grant review.

How does one apply to become a reviewer? To apply, please forward your resume to: Kristen Henry, Learn and Serve Coordinator, Serve DC, 441 4th Street, Suite 1140N, Washington, DC 20001 or e-mail kristen.henry@dc.gov, 202-727-8003. Please share this announcement with others who are qualified reviewers.

Is there a deadline to apply? We will begin reviewing resumes and contacting potential reviewers as the resumes arrive. Please submit resumes as soon as possible, but no later than 5pm on **April 4, 2007** for consideration.

What are the next steps after submitting a resume? Serve DC will review resumes and begin contacting qualified applicants. We will check for conflicts of interest and confirm availability at that time.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 17560 of Washington International School, as amended, pursuant to 11 DCMR § 3104.1, for a special exception to increase the number of private school faculty and staff from 102 to 110; to increase the number of students from 425 to 450; to expand to regulation size an existing soccer field on the school's campus; relocate the existing outdoor basketball court; relocate the existing gardener's cottage and undertake landscaping and other site work under section 206 in the R-1-A District at premises 3100 Macomb Street, N.W. (Square 2084, Lots 840 and 841).

Note: The original application only sought to increase the number of students, faculty and staff.

HEARING DATE: February 13, 2007

DECISION DATE: February 27, 2007

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 3C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3C, which is automatically a party to this application. ANC 3C submitted a report in support of the application. The Office of Planning (OP) also submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 206. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 206, that the requested relief can be granted being

BZA APPLICATION NO. 17560
PAGE NO. 2

in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED**, **SUBJECT to the following CONDITIONS:**

1. The School shall conduct its regular educational and athletic activities between 8 a.m. and 6 p.m., Monday through Friday.
2. The maximum number of students shall not exceed 450.
3. The total number of faculty and support staff shall not exceed 110.
4. The grounds of the School shall be maintained and landscaped at all times.
5. The School shall maintain an on-going liaison with the community of the type contemplated by a written agreement with Friends of Tregaron or by equivalent means.
6. The School shall maintain records documenting the total number of staff and faculty. The records shall be available for review by the community liaison by the first week of January each year.
7. The School shall develop and implement a traffic management plan which shall include the following:
 - a) Identification and encouragement of alternative transportation modes by means of the School's publication of information materials and in conjunction with its recruitment processes;
 - b) Designation of a campus transportation coordinator who will have overall responsibility for dissemination of information promoting transit usage and encouraging ride-sharing and alternative transportation means; and
 - c) An examination of means to further enhance the efficiency of the morning drop-off and after-school pick-up operations, to include designation of back-up personnel to address contingency situations that may arise.
8. The School shall require that all students that are transported to and from the site be dropped off or picked up only on School grounds.

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9. The School shall provide one-way treatment of the access drive at all times, which shall be clearly marked and maintained as one-way. The School shall install and maintain signs indicating such one-way system and enforce the one-way flow of traffic at all times (except during times of construction).
10. All parking lots will be constructed and maintained in a way that will not result in any increased lighting that could adversely impact the neighboring properties. All parking lots shall be maintained to prevent the head lights of any vehicles which park on the property from shining upon, or in the direction of neighboring properties located on Macomb Street.
11. The School shall maintain a storm water collection quality and quantity control system.
12. The School shall limit its athletic events to those consistent with typical member schools of the Potomac Valley Athletic Conference or a comparable high school league, including the usual and customary playoff games, and shall limit non-athletic events during the evening hours to fifty-three (53) per year.

VOTE: **4-0-1** (Geoffrey H. Griffis, Ruthanne G. Miller, and John A. Mann II to approve; Anthony J. Hood to grant by absentee ballot; Curtis L. Etherly, Jr. not participating)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: MAR 08 2007

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND

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REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 17568-A of 3510 16th Street LLC, pursuant to 11 DCMR § 3103.2, for variances from the nonconforming structure provisions under subsection 2001.3 (a), and the lot occupancy requirements under section 403, to allow a three story addition to an existing apartment building in the R-5-D District at premises 3508-3510 16th Street, N.W. (Square 2623, Lot 763).

HEARING DATE: February 13, 2007

DECISION DATE: February 13, 2006 (Bench Decision)

CORRECTED SUMMARY ORDER

Note: This order corrects BZA Order No. 17568, by reflecting the subdivision of Lots 757 and 758, into single record Lot 763 (Exhibit 28), as indicated in the above case description.

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 1D and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1D, which is automatically a party to this application. ANC 1D submitted a letter in support of the application. The Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance pursuant to 11 DCMR §§ 3103.2. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the Office of Planning and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 2001.3(a) and 403, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial

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detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to the architectural plans - Exhibit 10 in the record) be **GRANTED**.

VOTE: 4-0-1 (Geoffrey H. Griffis, Michael G. Turnbull, Ruthanne G. Miller and John A. Mann II to grant; Curtis L. Etherly, Jr. not present not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: MAR 14 2007

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE

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TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 17572 of Taylor Real Estate Trust LLC, as amended, pursuant to 11 DCMR § 3104.1, for a special exception from the roof structure provisions under subsection 411.11 and 411.3, a special exception for building height for roof structures under subsection 530.4(a) and (b) and pursuant to 11 DCMR § 3103.2, a variance from the building height provisions under subsection 530.4(c), to raise the height of an existing elevator penthouse serving an office building in the SP-2 District at premises 1128 16th Street, N.W. (Square 183, Lot 91).

Note: The application was amended to eliminate special exception relief under §770.6 and variance relief under §530.3, and consider the application under the relief as indicated above.

HEARING DATE: March 6, 2006
DECISION DATE: March 6, 2007 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 2B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2B, which is automatically a party to this application. ANC 2B did not submit a report related to the application. The Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under subsections 411.11, 411.3, and subsections 530.4 (a) and (b). No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

BZA APPLICATION NO. 17572**PAGE NO. 2**

Based upon the record before the Board and having given great weight to the OP report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 411 and 530, that the requested relief can be granted being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Based upon the record before the Board and having given great weight to the Office of Planning report filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, (530.4(c)) that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit 10, roof structure plans) be **GRANTED**.

VOTE: **5-0-0** (Geoffrey H. Griffis, John A. Mann II, Ruthanne G. Miller, Curtis L. Etherly, Jr. and Gregory N. Jeffries to approve).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: **MAR 12 2007**

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND

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REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 17577 of City Vista L Street LLC, pursuant to 11 DCMR § 3104.1, for a special exception to establish accessory parking spaces (located in Square 515N) serving a presently under construction mixed-use residential/retail building under section 2116, in the DD/C-2-C District at premises 440 L Street, N.W. (Square 515, Lot 158).

HEARING DATE: March 13, 2007

DECISION DATE: March 13, 2007 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 6C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6C, which is automatically a party to this application. ANC 6C submitted a letter in support of the application. The Office of Planning (OP) submitted a report in conditional support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 2116. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 2116, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by

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findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED** subject to the following **CONDITIONS**:

1. The Applicant shall provide evidence to the Zoning Administrator that it has executed a lease with the owner of the existing parking lot located at Lots 800,803-807, 821,840, 860, Square N-515 prior to the issuance of the Certificate of Occupancy for the residential "Building L" and that such lot can be used for the intended valet parking.

2. Approval shall not exceed **Nine (9) Months** from the date of the issuance of the Certificate of Occupancy for Building L.

VOTE: 4-0-1 (Geoffrey H. Griffis, Carol J. Mitten, Curtis L. Etherly, Jr., and John A. Mann II to approve; Ruthanne G. Miller not present not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: **MAR 15 2007**

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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